THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.5106 OF 1995

Date 19.09.2005

Between:

P.ChandraSekhar, Central Reserve Police force, Chandrayanagutta, Hyderabad.

..... PETITIONER

AND

The Additional Deputy Inspector, General of Police, Group Centre, Central Reserve Police force, Chandrayanagutta, Hyderabad.

.....RESPONDENT

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.5106 OF 1995

O R D E R:

Proceedings of the respondent dated 21.02.1995, whereby the services of the petitioner was terminated on the expiry of a period of one month from the date of service of the order, is impugned in this writ petition, as an order passed without jurisdiction. Rule 5 of the Central Civil Service (Temporary Service) Rules, 1965, (hereinafter referred to as 'CCS (TS) Rules'), is contended as not being applicable to members of the Central Reserve Police Force (hereinafter referred to as ' the CRPF'). The impugned proceedings dated 21.02.1995 is also challenged on the ground of violation of Articles 14 and 16 of the Constitution of India, Rule 16 of the Central Reserve Police Force Rules, 1955, (hereinafter referred to as 'the CRPF Rules'), and principles of natural justice.

Facts, to the extent necessary for this writ petition, are that the petitioner was appointed as a Constable in the CRPF on 04.08.1993. His services were terminated on 14.05.1994 on the ground that he had suppressed the fact that a criminal case was pending against him. Questioning the order of termination, the petitioner filed W.P.No.10531 of 1994. This Court, by order dated 29.08.1994, dismissed the writ petition. The criminal case filed against the petitioner, in STC.No.72 of 1993 before the Additional Munsif Magistrate, Kadapa, ended in his acquittal on 04.08.1994. On coming to know, in the second week of August 1994, that fresh recruitments were being made in the CRPF, the petitioner appeared for selections on 28.08.1994 and was selected in the said post by a duly constituted Selection Committee. Again, his services were terminated by the impugned proceedings dated 21.02.1995, in purported exercise of the powers conferred under Rule 5 of the CCS (TS) Rules, 1965

read with Rule 16(a) of the CRPF Rules, 1955.

The petitioner contends that the impugned proceedings casts a stigma and, since it is an order passed as a measure of punishment, it is liable to be set aside. It is also contended that the impugned proceedings dated 21.02.1995 is *mala fide* and amounts to imposition of punishment without enquiry, that while juniors to the petitioner were retained, his services were terminated. It is contended that at the time of his selection in August 1994, the petitioner was made to sign on several forms as a matter of formality, which were filled up by the concerned officials at the time of recruitment. It is further contended that since the CCS (TS) Rules, 1965, are not applicable to members of the CRPF, except when the Rules are silent, and since Rule 16 of the CRPF Rules specifically govern constables of the CRPF, the General Rules applicable to the other Central Government Servants have no application.

A counter affidavit is filed on behalf of the respondent, wherein it is stated that the petitioner was appointed in the CRPF as a temporary Constable with effect from 02.10.1994, that his appointment was subject to detailed verification of his character and antecedents through the Deputy Commissioner/Superintendent of Police under Rule 14 of CRPF Rules, 1955, and the verification roll, duly filled in by the petitioner, was sent for verification to the concerned Superintendent of Police. It is stated that, while filling up the verification roll, the petitioner had deliberately suppressed information regarding his involvement in a criminal case, about his earlier appointment in the CRPF and his earlier termination from Service. It is further stated that, the report of the Deputy Commissioner, Kadapa, revealed that the petitioner was involved in Cr.No.44 of 1992, under Section 160 I.P.C. of Pondimarri P.S. On coming to know that the petitioner had suppressed factual information, at the time of his appointment, the impugned proceedings dated 21.02.1995 was issued. It is contended that termination of services of the petitioner was on the ground that he had suppressed facts and had deliberately attempted to mislead the Government. It is contended that his services were terminated, not on the ground of his involvement in a criminal case, but in view of the fact that he had concealed and suppressed his involvement in a criminal case and that his previous appointment in Government Service had been terminated. It is stated that the verification roll contains a clear warning that suppression of any factual

information would result in termination of the services of the applicant. The allegation that the petitioner met the respondent is denied. It is stated that the petitioner was appointed by a separate Recruitment Board headed by the Commandant (Staff) DIGP, CRPF, Bangalore, and not by the respondent as alleged. It is stated that since the petitioner had suppressed facts, while filling up the enrolment form, despite a clear warning in this regard, his services were terminated under the impugned proceedings. The petitioner's contention that he was made to sign on forms as a matter of formality is denied as not being tenable. Reference is also made to Rule 7(b) & (c) of the CRPF Rules, 1955, whereunder the Commandant is the competent authority for appointment of constables and is empowered to discharge/terminate a temporary employee by giving one month's notice and that no enquiry is required to be conducted in this regard. It is further stated that the CCS(TS) Rules, 1965, are applicable to all temporary employees and that Rule 16 of the CRPF Rules, 1955, requires all members of the force to be enrolled on temporary basis for a period of three years and provides that during this period of engagement, they are liable to be discharged at any time, on one month's notice. Reference is also made to Rule 102 of the CRPF Rules, 1955, whereunder the conditions of Service of members of a force, in respect of matters for which no provision is made, shall be the same as are, for the time being, applicable to other officers of the Government of India of Corresponding status. It is stated that in view of Rule 102, the CCS(TS) Rules, 1965 would apply. It is also stated that the petitioner has an effective alternative remedy by way of an appeal to the DIGP (the appellate authority), and that the CRPF, being a highly disciplined organization dealing with law and order problems and situations of utmost importance to the nation, could not engage services of persons, who had deliberately suppressed their involvement in a criminal case and their earlier termination of service.

Before dealing with the contentions urged, it is necessary to refer to Rule 5 of CCS(TS) Rules, 1965, which reads as under:

5. Termination of Temporary Service;

1. (*a*) The services of a temporary Government Servant shall be liable to termination at any time by a notice in writing given either by the Government servant to the Appointing Authority or by the Appointing Authority to the Government Servant;

(*b*) the period of such notice shall be one month:

Provided that the service of any such Government servant may be terminated forthwith and on such termination, the Government servant shall be entitled to claim a sum equivalent to the amount of his pay *plus* allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services or, as the case may be, for the period by which such notice falls short of one month.

2. (a) Where a notice is given by the Appointing Authority terminating services of a temporary Government servant, or where the service of any such Government servant is terminated either on the expiry of the period of such notice or forthwith by payment of pay plus allowance, the Central Government or any other authority specified by the Central Government in this behalf or a Head of Department, if the said authority is subordinate to him, may, of its own motion or otherwise, re-open the case, and after making such enquiry as it deems fit,--

i. confirm the action taken by the Appointing Authority;

ii. withdraw the notice;

iii. reinstate the Government servant in service; or

iv. make such other order in the case as it may consider proper:

Provided that except in special circumstances, which should be recorded in writing, no case shall be reopened under this sub-rule after the expiry of three months—

i. from the date of notice, in a case where notice is given;

ii. from the date of termination of service, in a case where no notice is given.

(b) Where a Government servant is reinstated in service under sub-rule (2), the order of reinstatement shall specify—

i. the amount or proportion of pay and allowances, if any, to be paid to the Government servant for the period of his absence between the date of termination of his services and the date of his reinstatement; and

ii. whether the said period shall be treated as a period spent on duty for any specified purpose or purposes.

It is also necessary to refer to Rule 16 of the CRPF Rules, 1955, which reads as under:

16. Period of Service:

a. All members of the Force shall be enrolled for a period of three years. During this period of engagement, they shall be liable to discharge at any time on one month's notice by the appointing authority. At the end of this period those not given substantive status shall be considered for quasi-permanency under the provision of the Central Civil Services (Temporary Service) Rules, 1965. Those not declared quasi-permanent under the said rules shall be continued as temporary Government employees unless they claim discharge as per schedule to the Act. Those who are temporary shall be liable to discharge on one month's notice and those who are quasi-permanent shall be liable to discharge on three month's notice in accordance with the said rules, as amended from time to time.

(substituted vide GSR 204 dated 17.02.1960)

b. Should the Central Government decide at any time to disband the Force or any part of it either before termination of the period for which a member of the Force is enrolled or at any time thereafter, he shall be liable to discharge, without compensation from the date of disbandment.

c. No member of the force shall withdraw from the duties of his office without the express permission of the Commandant or an accredited gazetted officer.

d. (1) The appointing authority may, during the period of initial appointment of a member of the Force appointed under section 4 and 5 of the Act, permit him, for good and sufficient reason, to resign from the Force with effect from such date as may be specified in the order accepting his resignation:

(Substituted vide GSR No.450, Dtd 14.10.1995)

(2) The appointing authority may refuse to permit a member of the Force to resign if any emergency has been declared in the counter either due to internal disturbances or external aggression.

(substituted vide GSR dated 10.03.1973)

e. The appointing authority may give substantive status to such members of the Force as are found suitable in all respects.

Rule 16(a) of the CRPF Rules, 1955, provides that all the members of the Force shall be enrolled for a period of three years, during which period, they are liable to be discharged, at any time, on one month's notice. Under Rule 5 (1) (a) of the CCS (TS) Rules, 1965, the services of a temporary employee are liable to be terminated, at any time, by a notice in writing given either by the employee to the Appointing Authority or by the Appointing Authority to the employee. Rule 5(1)(b) of the CCS (TS) Rules, 1965, requires the period of notice to be one month.

The impugned proceedings dated 21.02.1995, terminating the services of the petitioner on one month's notice, was passed in exercise of the powers conferred under Rule 5(1) of the CCS (TS) Rules, 1965 read with Rule 16 of CRPF Rules, 1955, both of which provide for termination of services of a temporary employee on giving one month's notice. The petitioner's contention, that the order passed is without jurisdiction, is therefore to be rejected. Even if it were to be accepted that, in view of the specific rules in the CRPF Rules, Rule 5 of the CCS (TS), 1965 would not apply, in as much as Rule 16(a) of the CRPF Rules, 1955, provides for the discharge of a member of the force on one month's notice, the order terminating the services of the petitioner, on one month's notice, cannot be said to be an order passed without jurisdiction.

Sri J.V.Prasad, learned counsel for the petitioner, would however dispute the suppression of facts and contend that the entries in the verification roll were not filled up by the petitioner, but were filed in by the officers at the time of his recruitment. Except a vague averment in this regard, in the affidavit filed in support of the writ petition, no details are furnished in support of this plea. A perusal of the verification roll, (a copy of which is enclosed along with the

counter affidavit), would reveal that in Clause No.11(b) therein, the applicant was required to state, whether his previous employment was under the Government of India or the State Government or an undertaking owned or controlled by the Government of India or the State Government or an autonomous body, to which the petitioner stated "No". Again, under Clause 12(a), the petitioner was asked to state as to whether he had ever been arrested and prosecuted, kept under detention or bound down/fined, convicted by a court of law for any offence, to which the petitioner again stated "No".

It is not in dispute, and is in fact admitted by the petitioner, that he had earlier been appointed in the CRPF and his services were terminated as he was arrested and prosecuted in a criminal case. Though the said criminal case subsequently ended in acquittal, in answering, the aforementioned clauses in the verification roll, in the negative, the petitioner had suppressed facts. The verification roll contains a clear warning in Clause (1) to the effect that "furnishing of false information or suppression of any factual information in the Verification Roll would be a disqualification and is likely to render a candidate unfit for employment under the Government". Thus suppression of factual information, by the petitioner, disentitles him from being continued in employment under the CRPF, and renders his candidature unfit for employment. The action of the respondent, in invoking Clause 16(a) of the CRPF Rules, 1955, or Rule 5 of the CCS (TS), 1965, cannot be said to be illegal or in violation of Articles 14 and 16 of the Constitution of India.

Sri J.V.Prasad, learned counsel for the petitioner, would, however, contend that the impugned order casts a stigma on the petitioner. The Order, *per se*, is an innocuous order, and does not contain any details except to state that the services of the petitioner shall stand terminated with effect from the date of expiry of a period of one month from the date of service of the proceedings dated 21.02.1995. Learned counsel places reliance on the judgments of this Court in W.P.No.14527 of 1990, dated 10.12.1993 and W.P.No.5403 of 1990, dated 05.08.1996.

W.P.No.14527 of 1990 was the case of a CRPF constable, who was alleged to have produced a false domicile certificate as if he belonged to Gujarat State. It was contended before this Court that the petitioner was not given an opportunity to explain his case with regard to his domicile and the

action of the respondents, in terminating his services, was in violation of principles of natural justice. This Court held that if the respondents had reason to believe that the domicile certificate produced by the petitioner was false, they ought to have sought for an explanation from him as to the genuineness of the certificate and in the absence of an opportunity being given to the petitioner, the order of termination was in violation of principles of natural justice.

W.P.No.5403 of 1990, is also a case of a constable, of the CRPF, who was alleged to have produced a fake domicile certificate of Gujarat State. The order of termination was passed on the ground that the petitioner had enrolled himself against the quota meant for Gujarat State on the basis of the fake domicile certificate. This Court, set aside the order of termination, on the ground of violation of principles of natural justice.

The Judgments in W.P.No.14527 of 1990, dated 10.12.1993 and W.P.No.5403 of 1990, dated 05.08.1996, relate to production of false domicile certificates, which fact was disputed. In such circumstances, this Court, held that without putting the petitioners on notice, their services could not be terminated on the ground that they had produced a false domicile certificate and such action was in violation of principles of natural justice.

It is well settled that application of the rules of natural justice, would depend on the facts and circumstances of each case, and in cases where facts are either admitted or are not in dispute, requiring compliance thereof, would only be an empty formality. **S.L.KAPOOR V. JAGMOHAN; M.C.MEHTA V. UNION OF INDIA** and **ALIGARH MUSLIM UNIVERSITY V. MANSOOR ALI KHAN**.

It is not in dispute, in the present case, that the petitioner had failed to furnish information, regarding his previous arrest and prosecution in a criminal case and his services having been terminated earlier, in the prescribed column in the verification roll. The petitioner answered in the negative to these questions and thereby, suppressed factual information. The plea taken in the affidavit, in this regard, is that the form was a mere formality and was not filled up by the petitioner. I find it difficult to accept such a plea when details in verification roll are of utmost importance for appointment in a police force such as the CRPR wherein selected candidates are appointed as constables. **Law**

breakers cannot be entrusted with law enforcement. The undisputed fact of suppression of factual information would justify an order of termination being passed in accordance with the rules and cannot be interfered with on the ground that the said order of termination was not preceded by a notice or that no enquiry was held in this regard.

Learned counsel for the petitioner also places reliance on **DIPTI PRAKASH BANERJEE V. SATYENDRA NATH BOSE NATIONAL CENTRE FOR BASIC SCIENCES**, wherein the Supreme Court held that if the findings are arrived at in the enquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as "founded" on the allegations and would be bad. If no enquiry was held, no findings were arrived at, and the employer was not inclined to conduct an enquiry, but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. While dealing with the question as to whether, in a given case, the order of termination could be said to have cast a "stigma", the Supreme Court held that it depends on the facts and circumstances of each case and the language or words employed in the order of termination to judge whether the words employed cast a stigma or not. In the case on hand, there is no reference to any specific incident in the order, and it cannot therefore, be said that the impugned proceedings dated 21.02.1995, casts a stigma on the petitioner.

RADHEY SHYAM GUPTA V. U. P. STATE AGRO INDUSTRIES CORPN. LTD., was a case where the order of termination was preceded by an inquiry, evidence was recorded, findings as to misconduct of a definite nature were arrived at behind the back of the Officer and the order of termination was passed after receipt of the enquiry report, without making any reference thereto. Such an order was held, by the Supreme Court, to be an obvious case where the report and its findings were the foundation of the termination order and the order was held to be punitive and in violation of principles of natural justice. In the case on hand, no enquiry officer was appointed, no enquiry conducted nor does the impugned proceedings contain any words which can be said to have cast a stigma on the petitioner.

I n **PAVANENDRA NARAYAN VERMA V. SGPGI OF MEDICAL SCIENCES**, the Supreme Court held that one of the judicially evolved tests, to determine whether in substance an order of termination is punitive, was to see whether prior to the termination there was (a) a full-scale formal enquiry; (b) into allegations involving moral turpitude or misconduct; and (c) which culminated in a finding of guilt. If all the three factors were present, the termination must be held to be punitive irrespective of the form of termination and conversely, if any one of the three factors is missing, the order of termination is required to be upheld. In the case on hand, none of the three conditions are satisfied. No full-scale formal enquiry was ordered into the allegations involving moral turpitude or misconduct nor did they culminate in a finding of guilt.

Learned Standing Counsel for the Central Government relied on the judgments of the Supreme Court in **CHAMPAKLAL CHIMANLAL SHAH V. UNION OF INDIA**, **UNION OF INDIA V. K.BALAKRISHNAN KANI**, **UNION OF INDIA V. A.P.BAJPAI** and **STATE OF PUNJAB V. BALBIR SINGH.**

In **Champaklal Chimanlal Shah** (7 supra), the Supreme Court held that Rule 5 of the Central Civil Services (Temporary Service) Rules (1949) gives power to the Government to terminate the services of a temporary government servant, on one month's notice or on payment of one month's pay in lieu of notice, that Rule 5 was not in violation of Article 16 of the Constitution of India and that Article 311 of the Constitution of India was not attracted in a case of termination of services of a temporary employee.

In **K.Balakrishnan Kani** (8 supra), the termination order, passed under Rule 5(1) of the Central Civil Services (Temporary Services) Rules, 1965, was upheld, as the order did not cast any stigma. The Supreme Court held that quotation of the rule was by itself sufficient reason and nothing more should be looked into in the order of termination.

In **A.P.Bajpai** (9 supra), the Supreme Court held that where an order of termination simpliciter is challenged in writ proceedings, the facts which led to passing of the order of termination, as stated in the counter-affidavit, could not

be relied on, to infer that the termination order was stigmatic and the order passed should alone be examined in this regard. In the impugned proceedings dated 21.02.1995, except a reference to the rules, which empower passing of the order, nothing else is stated which can be said to have cast a stigma on the petitioner.

In **Balbir Singh** (10 supra), the Supreme Court held that in order to determine whether the misconduct was the motive or foundation of the order of termination, the test to be applied was to ask the question as to what was the "object of the enquiry". If an enquiry or an assessment was done with the object of finding out any misconduct on the part of the employee and for that reason his services were terminated, it is an order punitive in nature. On the other hand, if such an enquiry or an assessment is aimed at determining the suitability of an employee for a particular job, such termination would be termination simpliciter and not punitive. The other test, in this regard, is as to whether the termination is preceded by a full scale formal enquiry into allegations involving misconduct on the part of the employee, which culminated in the finding of guilt, and the "purpose of the enquiry" i.e. whether the purpose of the enquiry was to find out any misconduct on the part of the employee or was aimed at finding out as to whether the employee was unlikely to prove to be an efficient officer.

In this writ petition, verification of antecedents was only to ascertain as to whether the petitioner was suitable for being appointed in the CRPF. On verification, it was found, that the petitioner had suppressed factual information regard his being arrested in a criminal case and that he had earlier been terminated from Government service. The order passed by the respondent, cannot be said to cast a stigma on the petitioner. Termination of services of a temporary employee, in accordance with the Rules, cannot be said to cast a stigma or to violate rules of natural justice. The impugned proceedings dated 21.02.1995 is an innocuous order of termination, passed in exercise of the powers conferred under Rule 5 of CCS (TS) Rules, 1965 read with Rule 16(a) of CRPF Rules, 1955, and do not cast any stigma on the petitioner.

The writ petition fails and is accordingly dismissed. No costs.

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16.09.2005

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